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CURRENT TOPICS

Patience Rewarded

AFTER what must be a record period of gestation The Law Society and the London County Council have produced the form (Con. 29E) of additional enquiries to the London County Council to accompany requisitions for official searches in the local land charges register. The principle reason why a separate form is needed for the London County Council is that within that county the City Corporation and the Metropolitan Borough Councils are the highway authorities. It follows that none of the questions relating to highways which appear on the ordinary form can apply to the London County Council. In addition there are one or two other matters on which enquiry of the London County Council is not appropriate. In the new form, there are only eight questions, which do not include that on whether any order under s. 87 of the National Parks and Access to the Countryside Act, 1949, has been made. This enquiry is equivalent to that in the enquiries before contract which relates to orders made by the Minister of Agriculture and which, where not deleted in urban areas, provokes so many witty replies from vendors' solicitors. The form of enquiries makes specific reference to the County of London Development Plan and will come into use on 1st April, 1956. It will be published by the Solicitors' Law Stationery Society, Ltd., in the last week of this month.

The Restrictive Trade Practices Bill

THE occasion of the Second Reading of the Restrictive Trade Practices Bill on 6th March provoked debate outside as well as in Parliament, except, of course, on the wireless and television waves, where the rule of fourteen days' restraint was observed. Mr. DOUGLAS JAY'S amendment on behalf of the Opposition that a second reading be declined on the ground that the Bill disregarded the main recommendations of the Monopolies Commission Report of June, 1955, was rejected by 319 votes to 252. In the course of his reply to the debate the Parliamentary Secretary to the Board of Trade, Mr. DEREK WALKER-SMITH, said on the main issue, whether the Government were right to constitute a judicial court on economic matters, that the courts dealt with many social and economic matters under the guidance of principles laid down by Parliament. Outside Parliament, LORD KILMUIR, speaking at the annual dinner of the Glasgow Juridical Society, said that the claimants ought not to succeed merely because they could come within one of the seven categories. Their practice might still, on balance, be undesirable, and the Bill still put on them the onus of proving that the use of the practice had not been—generally speaking—unreasonably detrimental to the public. He was aware that this involved, to

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some extent, the formation of an economic judgment by the court. He did not see how that could be avoided. The court would not consist purely of lawyers; judges would sit together with men who had got experience of the questions they would be considering, and he could not see why such a body should not, within the boundaries drawn by the Bill, form an impartial and objective judgment on these questions. Members of Parliament had already received, when the debate began, a detailed memorandum from the Federation of British Industries, the Association of British Chambers of Commerce and the National Union of Manufacturers. While welcoming the establishment of a judicial court, the memorandum attacked cl. 16 (dealing with presumption as to the public interest) as amounting to a direction to the court to find a verdict of "guilty" without any but the most limited grounds for exception. This is felt to be "a reversal of the basic principle of British justice."

Gaming Law

THE UNDER-SECRETARY TO THE HOME OFFICE made a statement in the Commons on 9th March to the effect that the Government accepted the Betting Commission's major recommendation that the present law of gaming should be replaced by an entirely new code. The practical details would need much working out and would involve considerable discussion in Parliament. Legislation was being prepared for introduction at the earliest opportunity, but he could give no indication when it would be introduced. He said that after looking at all the alternatives the commission came to the clear conclusion that the law should be amended to make lawful the establishment of licensed betting offices to which people could go openly instead of putting on bets surreptitiously at street corners in defiance of the law. That conclusion went to the heart of the matter and the Government accepted it. Such a change would involve a comprehensive system of control. The system envisaged by the commission involved the registration of bookmakers, the legalising of off-the-course cash betting by post, the establishment of licensed betting offices, and sterner penalties against receiving cash bets off the course in any way other than by post and through the licensed betting offices. The Government accepted that nothing less than this would be effective.

Fair Play at Government Inquiries

THE replies of the Permanent Secretary to the Ministry of Housing and Local Government to the searching questions put to her by the members of the Committee on Administrative Tribunals and Inquiries on 6th March make it clear that, while the Ministry is not averse to methods of judicial determination, it is also concerned with getting on with its primary work. Dame EVELYN SHARP said, referring to the growing number of appeals against development plans, that it would be a great relief if some of the smaller cases could be separated and some quicker and more local method devised of reaching a decision on them. If the issue was one of local amenity, she thought it would be better settled by "almost some form of local jury." She did not agree, in her reply to questions by Mr. H. WENTWORTH PRITCHARD, a member of the Council of The Law Society, that it might be best if an inquiry into objections against a designation order were heard by an independent person instead of, as now, by a member of the Ministry's planning inspectorate. She did not think that an independent person would be as helpful and informative to the Minister as one familiar with planning practice—and it was not easy to find outside qualified persons. She agreed, however, that it was arguable that in the hearing of appeals against designation orders (what she called "new town cases") it would be right for an outside inspector to be appointed, whose report would be published.

Common Lands

AT the first public hearing by the Royal Commission on Common Land on 7th March Sir ALAN HITCHMAN, Permanent Secretary to the Ministry of Agriculture, said that the Commission might consider how far nineteenth-century legislation had been effective, and whether its objectives were still sound. Permanent pasture needed periodical ploughing and fencing, controlling of stock and possibly drainage. Most of this was not possible on most commons, which were rigidly controlled under the present law. Again, on upland commons in Wales and the north of England, one essential way of improving the grazing was to plant trees for shelter. Yet present legislation prohibited the planting of trees for shelter or timber production on commons. Sir Alan Hitchman agreed that commons could be divided into two groups, agricultural and amenity.

Control of Borrowing

THE limit of exemption from capital issues control is reduced from £50,000 to £10,000 by the Control of Borrowing (Amendment) Order, 1956 (S.I. 1956 No. 358), which came into operation on 14th March. Its effect is to forbid any person without the consent of the Treasury to carry out any transaction of a kind described in the Control of Borrowing Order, 1947, if the total value of such transaction together with the value of all previous transactions carried out by the same person in the previous twelve months exceeds £10,000. The field in which the Capital Issues Committee will presumably maintain that "vigorously critical attitude" urged on them by the Chancellor a few weeks ago has thus been widened to include a range of capital transactions previously unrestricted.

The Chambers of Commerce and the Self-Employed

THE Association of British Chambers of Commerce have issued a booklet, entitled "Taxation of Profits and Income," dealing with the report of the recent Royal Commission on the subject. A chapter on "self-employed persons, controlling directors and employees without schemes" states that the tax legislation should be confined to laying down the broad principles of fixing the limit of the reasonable retirement provision, of exempting the build-up, and of taxing the benefits. As regards optional provisions for converting an annuity into a life annuity for a surviving widow or dependent children, the booklet comments that it is not necessary to the scheme to have only a life annuity; and there is no point in limiting the conversion to an annuity for the widow or dependent children only; there could be other dependants, such as parents, or other incapacitated relatives. A similar point arises on the conversion of refunds payable on death before retirement age into annuities for the widow or children. The reference to the widow or children should be extended so as to include any dependant.

THE RESTRICTIVE TRADE PRACTICES BILL—II

RESTRICTIVE AGREEMENTS OTHER THAN RESALE PRICE MAINTENANCE

PART I of the Restrictive Trade Practices Bill requires the registration of certain restrictive agreements and arrangements with a new official, the Registrar of Restrictive Trading Agreements, when the Board of Trade orders that the registration provisions shall come into force, and it may appoint different dates for this purpose for different classes of agreement. The Registrar may apply to the Restrictive Practices Court for an order invalidating any registered agreement and forbidding the implementation of it or any similar agreement. The Monopolies Commission ceases to have power to enquire into agreements and arrangements to which Pt. I of the new Bill applies, and the Board of Trade loses its power to make orders under s. 10 of the 1948 Act forbidding practices embodied in such agreements and arrangements. There will consequently be a division of jurisdiction between the Monopolies Commission and the Restrictive Practices Court. The Commission will be primarily concerned with monopolistic tendencies in business which are against the public interest, and the Court will be exclusively concerned with restrictive agreements and arrangements. But the division is not quite as simple as that, and, as will be shown below, it leaves some loose ends untied.

The agreements and arrangements registrable under Pt. I of the new Bill are listed in cl. 5. They include agreements and arrangements which are not intended by the parties to be legally enforceable, and where a trade association makes recommendations to its members that they should take any action which might be taken if they had entered into registrable agreements with one another, the constitution of the association and the recommendations become registrable agreements. This extended definition of agreements and arrangements is necessary since many restrictive practices, particularly price fixing, are operated under gentlemen's agreements, or without any agreement at all, but only arrangements for consultation with the understanding that all participants in the consultation will conform to the conclusions reached.

An agreement or arrangement is registrable only if it is made between persons carrying on business as producers, wholesalers or retailers, or applying any manufacturing process to goods, and if it imposes mutual restrictions on the parties in respect of certain matters. It is this requirement of mutuality which cuts down the scope of cl. 5. Horizontal agreements always impose mutual restrictions on the parties to them, but vertical agreements usually impose restrictions on one party only. A resale price maintenance agreement which obliges the supplier to give the buyer a discriminatory discount will fall under cl. 5, but if there is no stipulation for the discount, or if that stipulation is contained in a separate agreement (the Bill contains no provision for treating associated transactions as one), the agreement will be outside cl. 5. If it is outside cl. 5, it will be subject to investigation by the Monopolies Commission if a sufficiently large sector of trade is affected by it, but the remedial measures in the hands of the Board of Trade under s. 10 of the 1948 Act will then be different from those of the Restrictive Practices Court under cl. 15 of the new Bill.

What restrictions make agreements registrable

The matters restrictions on which will make an agreement registrable under cl. 5 may be summarised as follows :—

(*a*) The prices to be charged, quoted or paid for goods or for applying any manufacturing process to goods. (This will cover price fixing agreements, and resale price maintenance agreements and agreements for discriminatory discounts which impose mutual restrictions.)

(*b*) Other terms or conditions upon which goods are to be supplied or acquired, or upon which any manufacturing process is to be applied to goods. (This will cover agreements between manufacturers to maintain resale prices fixed by them individually.)

(*c*) The quantities or descriptions of goods to be produced, supplied or acquired, or to which any manufacturing process is to be applied, and the nature of manufacturing processes to be applied to goods. (This will cover agreements limiting output either in quantity or quality. Clause 5 adds that an agreement is deemed to impose a restriction under this paragraph if it requires a party to it to pay money to another person if he produces or sells more than his quota fixed by an agreement limiting output, or applies any manufacturing process specified in such an agreement.)

(*d*) The persons to, for or from whom, or the places in or from which goods may be supplied or acquired, or any manufacturing process applied. (These are agreements for market sharing and for collective refusals to deal with suppliers or buyers.)

Exemption from registration

Clause 6 exempts certain transactions from Pt. I of the Bill. An agreement authorised by statute or by a "scheme, order or other instrument" made under any enactment is exempt. Presumably the words "or other instrument" are to be construed *ejusdem generis* with the preceding words, and will exempt only instruments made by public authorities under statutory powers, such as agricultural marketing schemes made under the Agricultural Marketing Acts, 1931–1949. But if the word "instrument" is given its literal meaning, it will include the memoranda of association of companies registered under the Companies Acts, and the Bill will be worthless if two or more companies can secure exemption for restrictive agreements made between them simply by including the power to make such agreements in their memoranda of association. A clearer drafting of cl. 6 is called for to cover this.

Also exempt are agreements made between a holding company and its subsidiaries, or between subsidiaries of the same holding company. This provides a means of escape from Pt. I which is undoubtedly unintended. A company is the holding company of another under the Companies Act, 1948, s. 154, not only when it holds more than one-half of the other's equity share capital, but also when its consent is required for the appointment of a majority in number of the other's directors. Therefore, let several companies who wish to enter into a restrictive agreement form a new company, and let them further contract with the new company that its consent shall be required to the appointment of certain of their directors who will be numerically in a majority, but who will be precluded by their articles of association from controlling the voting power at board meetings. The original companies are now fellow-subsidiaries and their restrictive agreement is outside Pt. I. Admittedly it is subject to the jurisdiction of the Monopolies Commission, but it is, to say the least, curious that when the law subjects persons to a form

of public regulation they should be able thus to choose the authority by which they will be regulated.

A further exemption from Pt. I of the Bill is an agreement for the sale of goods, or the application of a manufacturing process to goods, which imposes restrictions only in respect of those goods. This, too, seems to provide an escape for manufacturers who wish to fix the common prices or terms on which they will sell their goods. They will set up a company to which they will sell all their output, and which will then market it at the intended common prices; the resale price will be negotiated by the marketing company with the manufacturers, and if the manufacturers do not consult together it cannot be said that there is any restrictive arrangement between them. The only flaw in this scheme is that the manufacturers might be held to be members of an association (which the Bill does not define) and the common resale prices negotiated by the marketing company might be recommendations of that association, so that the whole scheme would come within cl. 5 for that reason.

Finally, patent licences and assignments are exempt from Pt. I of the Bill if they impose restrictions only in respect of goods or processes which are subject to the patent. This, too, affords a wide immunity for horizontal restrictive agreements effected behind the shelter of cross-licensing of patents held by the participating manufacturers. Such agreements may be subject to inquiry by the Monopolies Commission, but s. 10 (5) of the 1948 Act provides that no order made by the Board of Trade to remedy conditions found by the Commission to be against the public interest prevents any person enforcing any conditions contained in a patent licence granted by him. Consequently, restrictive conditions contained in patent licences will be subject to no control under the 1948 Act or the new Bill, and the only available sanction against them is the power of the Board of Trade to apply to the Comptroller-General of Patents under the Patents Act, 1949, s. 40, to cancel such of them as restrict the use of the invention by the licensee, or the power of the patentee to grant other licences, when the Monopolies Commission has found such restriction to be against the public interest.

Powers of Restrictive Practices Court

When an agreement has been registered under the new Bill, the Registrar may apply to the Restrictive Practices Court to declare that any restrictive condition contained in it which falls under cl. 5 is contrary to the public interest (cl. 15). If the court so declares, it may also restrain the parties to the agreement from carrying out or enforcing the restrictive condition, and from entering into another agreement with like effect. But the court's remedial powers are not so extensive as those of the Board of Trade under s. 10 of the 1948 Act, by which it may declare it unlawful for any person to withhold goods or services from another, or to give any preference in supplying or ordering goods or services. The court should be given these powers, too, for it will be of little use for it to forbid the carrying out of an agreement between manufacturers to stop list a dealer for some reason other than his refusal to maintain their prices, or to discriminate against him in the prices they charge him, if they may then individually and without agreement do those very acts.

Presumption as to public interest

Clause 16 is certain to be the most controversial clause of the whole Bill. It provides that a restriction falling under cl. 5 shall be deemed to be contrary to the public interest, unless the court is satisfied that certain grounds for justification exist, and that the restriction is not unreasonably detrimental to purchasers or consumers of the goods produced or sold by the parties to the agreement, nor to persons selling such goods or producing or selling similar goods, nor to the public generally. The importance of a presumption in determining the outcome of a trial is proportionate (*a*) to the difficulty of obtaining evidence to rebut it, and (*b*) to the imprecision of the grounds which the law makes sufficient to rebut it. Parties to restrictive agreements will find that both these elements are heavily against them under cl. 16, and the burden of rebutting the presumption it raises in a way that would satisfy a court of law will be next to impossible. Evidence of the economic effect of restrictive agreements can be obtained only by lengthy and expensive surveys of the branch of industry or trade affected; the evidence of a few manufacturers or dealers about the effect of such agreements on their own businesses will be valueless. Furthermore, the criteria laid down by cl. 16 for justifying restrictive agreements are all qualified by the epithet "reasonable." This will mean that the decisions of the members of the court will be bound to depend more on their personal views of public policy than upon whether the evidence adduced satisfies a standard laid down by law. Judgments in a field like this cannot avoid being subjective, and it would be more honest and practical if cl. 16 made the criteria for justifying restrictive agreements merely matters which the court must consider in deciding whether, in all the circumstances, the restrictions are against the public interest.

Rebuttal of presumption

The principal grounds upon which restrictions may be justified under cl. 16 are:—

(*a*) That the restriction is reasonably necessary to preserve some benefit or advantage to the public (such as a restriction on the sale of technical goods to dealers who are competent to install and service them).

(*b*) That the restriction is reasonably necessary to protect the participants from actions by another person or persons aimed at diminishing their power to compete. (This covers a combination of dealers formed to compel manufacturers to allow them special discounts so that they may reduce their resale prices to those of another dealer who is cutting his prices in order to drive them out of business.)

(*c*) That the restriction is reasonably necessary to enable the participants to obtain fair terms for the supply or acquisition of goods from any one person who controls a preponderant part of the business of acquiring or supplying such goods. (This covers combinations of dealers who individually have little bargaining strength, formed to negotiate collectively with a manufacturer who is economically strong, and *vice versa*. The word "preponderant" may cause difficulty; does it mean "more than half," "almost all," or merely "a substantial portion"?)

(*d*) That the removal of the restriction will have a serious and persistent adverse effect on employment in the area or areas where the industry or trade is carried on. (This ground would seem to run counter to the general philosophy of the Bill. If restrictive agreements do indeed assist in maintaining full employment, and a vital element of the public interest is the maintenance of full employment, it becomes difficult to maintain that restrictive agreements are generally against the public interest).

(*e*) That the restriction is ancillary to another restriction which the court has found not to be against the public interest.

Who benefits ?

The vital questions raised by the Bill are (*a*) will it work, and (*b*) will manufacturers, dealers and consumers benefit by it ? Both questions can be answered properly only after the Bill has been tried out, but at this stage it may not be unwise to bear these reservations in mind. In the first place it is impossible to make manufacturers or dealers compete by Act of Parliament. The effect of legislation is purely negative ; it may invalidate restrictive agreements and forbid collusive conduct, but it cannot make business men cut their prices and sell in markets where others predominate when they fear perhaps greater retaliation if they do so. Secondly, it may be that our economy is now such that the public would not be best served by a system where unrestrained and aggressive competition prevails, as it did a century ago. The probable result of a return to such an economy would be that the giant manufacturing and distributing firms would quickly eliminate their smaller competitors, and establish the monopolies which the 1948 Act and the new Bill seek to prevent. However, the new Bill may serve a useful purpose in removing restrictions which are of no practical benefit to anyone, and by making it possible for some branches of trade which have become ossified by self-imposed regulation to regain some life and vigour.

R. R. P.

CITIZENS' ADVICE BUREAUX AND LEGAL AID AND ADVICE

(The writer of this article is the Secretary of the National Citizens' Advice Bureaux Committee.)

RECENT correspondence in the columns of this Journal and Mr. Asterley Jones' article on possible methods of implementing the remaining sections of the Legal Aid and Advice Act (*ante*, p. 118) suggest that it may be useful to consider the present situation in relation to the work of Citizens' Advice Bureaux.

To do so we shall need to take a brief look at the Citizens' Advice Bureaux service ; at its background, its purpose and its methods ; and its relationship with the legal profession.

Perhaps the simplest way of doing this will be in the first place to clear away some misconceptions.

Let us first establish that Citizens' Advice Bureaux are not, and do not purport to be, centres of legal advice, though many have some means of providing such advice for those unable to pay for it, through the generous co-operation of members of both branches of the legal profession. We are grateful to them, as indeed we are grateful to the many other professional people whose voluntary service supplements and supports our work.

Thus Bureaux workers do not themselves attempt to give legal advice, nor to usurp the functions of surveyors or valuers or marriage guidance counsellors or probation officers, all of whose specialist skills and experience we must from time to time rely on.

We are indeed aware that we are not competent to do these things and, equally, that few solicitors or other professional people would be willing or able to deal with many of the problems that come to the Bureaux.

Nor must the Bureaux be thought of as places in which grievances are fostered. Rather, they are explored and examined, dealt with where possible when they are real, or explained away when, as in so many instances, they arise from a misunderstanding of what "officialdom" has said, or an inability to apply some ruling to particular circumstances.

Function and method

Our function is a simple one and falls into three main parts. First, we are a source of information—a machine through which ordinary men and women can be helped to understand the kind of things they need to know if they are to find their way successfully about the complicated world in which we live to-day. This aspect of Bureau work is increasingly recognised by local authorities and central departments who seek our co-operation in explaining their policies to the public and making their services known.

Secondly, we are concerned to advise—not in the sense of saying "If I were you I would do so and so" and certainly not in the sense that "This or that is wrong and this is right," but rather to provide a means through which people may be helped to take their own decisions when these are needed in an atmosphere of friendliness and understanding and in the light of all the information on which they should base such decisions, realising the consequences of what they propose to do and a knowledge of the possible alternatives.

Thirdly, we are a "window" through which the social workers and administrators may look at the man-in-the-street and see his needs and difficulties and his reactions to the services that are provided for him.

The views of Citizens' Advice Bureaux are increasingly sought through their headquarters on many social problems—by the Royal Commission on Marriage and Divorce, by the Ministry of Labour's Committee on the rehabilitation of the disabled, by the Ministry of Housing on the provision of temporary accommodation for homeless people and the effect of this on family life, by the Select Committee on Estimates on the working of the Legal Aid Scheme from the "consumer" angle and in many other ways. In all these matters the views expressed are based on the actual day-to-day experience of the Bureaux.

If we have a passionate conviction it is that truth is of paramount importance ; that the essence of true democracy is not in the ability to vote but in ensuring that its citizens have a real understanding of what is being done in their name and on their behalf and that they are able to benefit from and use constructively the services provided for them ; that the fancied injustice can be as harmful to the one who suffers it as the genuine grievance.

This is the principle that underlies our work. In doing this we have no axe to grind—no political theory to expound, no religious philosophy to implant in the minds of those who come to us. We agree with a comment on the Crichel Down enquiry that "The citizen has a right to expect not only that his affairs will be dealt with effectively and expeditiously but also that his personal feelings no less than his rights as an

individual will be sympathetically and fairly considered." We know that modern legislation has made it increasingly difficult for the official, with the best will in the world, always to achieve this aim and that he will be helped in doing this if the citizen himself understands his position and can explain his needs and wishes. "We are all fallible," said an officer of the National Assistance Board at a Citizens' Advice Bureaux training course recently, "and we welcome the provisions that are made for people to appeal against our decisions. Neither I nor my colleagues will take it as an unfriendly action if Citizens' Advice Bureaux draw people's attention to them."

History of Citizens' Advice Bureaux

Citizens' Advice Bureaux as a national service were a war-time conception designed to meet the need for information and advice in war conditions; to explain the spate of regulations and restrictions; to act as a guide through the many problems arising from the break-up of homes and the separation of families; to provide personal help on problems arising from the loss of a home or the death of the breadwinner. Their value was early recognised by public and authorities alike, the Ministry of Health providing funds under its civil defence powers and, later, commending them to local authorities as a peace-time service and promising legislation to enable them to provide or aid it. This was embodied in the Local Government Act, 1948 (ss. 134 and 136), and to-day the majority of Bureaux are financially supported under one or other of these sections, grants varying from £2,000 a year in some large towns where full-time professional workers are employed to £25 or £50 a year and premises in many smaller ones where the work is dealt with by trained volunteers.

Each Bureau is an independent local unit, its pattern adaptable to the needs of the area it services, to the availability of local leadership and other practical considerations. All have the common thread which links them with the National Citizens' Advice Bureaux Committee which provides them with background information, helps with the recruitment and training of workers and in general is responsible for setting a common standard of work and organisation to which all Bureaux endeavour to conform.

The information service

This was a need envisaged from the start and the machinery to meet it has been built up, adapted and developed to meet the expansion of the service.

Many members of the legal profession are familiar with the publication "Citizens' Advice Notes"* provided by the parent body of the Citizens' Advice Bureaux and some are subscribers to it, as are many Government departments and local authorities. This digest of legislation compiled from official sources and kept up to date by periodic supplements was originally designed for Citizens' Advice Bureaux and is still the background information on which their work is based. It is supplemented by a monthly information circular and by periodic administrative memoranda on subjects of special concern to the Bureaux. These latter have included in recent months a paper on the extension of the powers of county courts and the application of legal aid to them, on the changes in rating and valuation procedure and on problems relating to house purchase.†

These administrative memoranda are prepared in consultation with the statutory departments and professional bodies concerned, including The Law Society, and the last is perhaps of particular interest to members of the legal profession since the decision to produce it arose from the increasing number of enquiries about house purchase received in the Bureaux and the Bureaux' recognition that many of the problems which reach them at too late a stage often have tragic consequences; that of the mistakes made some at least could have been avoided *if the necessary professional advice had been sought at an early stage.* It is in order to draw the attention of a wider public to these facts that the decision to print and publish the memorandum has been taken.

Bureaux and the legal profession

The problem of those enquirers who clearly need legal advice, but who for one reason or another have failed to seek it, is familiar to most Bureaux. Sometimes the reason is lack of means and the question may suitably be referred to a poor man's lawyer or to the Bureau's free legal adviser.

Sometimes the problem may have a social as well as a legal aspect, and the latter may not, indeed, be in the mind of the enquirer when he comes to the Bureau and may only emerge when the situation has been fully discussed.

Often, however, the enquirer is able to pay for legal advice, but inexperienced about seeking it and almost certainly nervous about the cost.

These enquirers present a different problem since clearly they must not be referred to a poor man's lawyer, nor must the Bureaux choose a solicitor for them, nor guide them in the direction of a particular firm. Some, indeed, are of special difficulty in being outside the income level that we have accepted for poor man's lawyer work whilst still unable to spend more than a very limited sum on a legal consultation. It is normal for Bureaux in these circumstances to urge the enquirer, once he has chosen his solicitor, to ask him quite frankly what the initial consultation will cost.

There remain the matrimonial and other domestic questions so often involving humble people and where, so frequently, legal aid is obviously required if the case is to be properly put forward when it reaches court, and the many rent cases, so often distressing and worrying, particularly to elderly people, which now, happily, may be dealt with under the extension of legal aid to the county courts.

With this experience, Bureaux were encouraged by the setting up of the Rushcliffe Committee and placed their experience at its disposal through the evidence given by their parent body, the National Council of Social Service. They welcomed the passing of the Legal Aid and Advice Act and were deeply concerned at the Government's decision to implement only a part of it for economic reasons.

Consultations with The Law Society took place, both on co-operation under Pt. 1 of the Act and as to steps to be taken to fill the gap pending the implementation of the remainder. As a result, a code of rules was drawn up for solicitors acting as "poor man's lawyer" or legal adviser to Citizens' Advice Bureaux (and later similar steps were taken by the Bar Council) and circulated to local law societies with a request for their support. Efforts were made by Citizens' Advice Bureaux to extend their services, but these met with only limited success, since many members of the legal profession took the view that with the necessary legislation on the statute book there should be no need for new voluntary arrangements. Solicitors and barristers

* Citizens Advice Notes: a digest of legislation. National Council of Social Service, 26 Bedford Square, London, W.C.1, price £4 4s. for initial volume and £2 per annum thereafter.

† Now in course of printing for publication under the title of "Buying a House—Do's and Don'ts." National Council of Social Service, price 1s.

already engaged in this work have, however, continued to give invaluable service, and some new ones have come forward.

The National Citizens' Advice Bureaux Committee have, therefore, continued to press, in consultation with the National Council of Social Service, for the full implementation of the Act and especially for the provision of a comprehensive legal advice service under some scheme or another. It is not for us to say what form this should take and the National Citizens' Advice Bureaux Committee have purposely refrained from expressing any view as to whether the plan envisaged in the Act, or some modification of it, would better meet the need. We are aware that many people to-day are in a position to pay at least something towards the cost of legal services and that only a small proportion of the population can properly be regarded as coming within the income group (or its modern equivalent) originally provided for by poor man's lawyer services. We, in the Bureaux, are, however, concerned with the individual and conscious that the often relatively small affairs of humble people can cause great distress and anxiety to those concerned, and we shall not feel that justice has been achieved until some scheme is evolved and put into practice to meet their needs.

In concluding, it seems desirable to make some reference to " P.M.L.'s " letter in the issue of this Journal of 18th February last, which although it can hardly be taken to refer to Citizens' Advice Bureaux has already aroused some concern among Bureaux workers.

We have tried to show in this article the kind of relationship the Bureaux strive for and, in the main we think, achieve with the legal profession in general and The Law Society in particular. We do not claim to be immune from error and we certainly do not claim that the quality of work or the discretion of workers in every Bureau is equal to that in the best. Every voluntary organisation—as we imagine every professional body—has its weaker links. It is certain that some Bureaux make mistakes ; some may well have difficulty in understanding and endeavouring to operate a code of rules not easily followed by lay people ; nor is it inconceivable that were a particular solicitor himself to choose to disregard the implications of his own Practice Rules a Bureau might the more easily be led inadvertently into error.

What we do claim is that we are ourselves unaware of any cases in our seventeen years of work where there has been any intentional disregard on the part of Bureaux of the rules laid down by the profession, that as a service we accept the validity of these rules and do our best to help Bureaux to interpret them so far as lies in their power ; that we are conscious of and appreciate the confidence reposed in us by The Law Society. Our attitude on this particular point is perhaps best illustrated by a quotation from the headquarters circular on the Legal Aid and Advice Act, referred to above, which is as follows :—

> " *It is of extreme importance that Bureaux should not direct enquirers to a particular solicitor* or, indeed, advise them as to which solicitor they should choose. The most the Bureau should do when asked for advice as to how to choose a solicitor is to show a list of those practising in the town and advise as to which firms undertake work of the kind for which the legal aid certificate has been granted. Bureaux will recognise a very important difference between procedure here and in cases where legal advice is sought through the Bureau's own machinery and where, since no payment is to be made, the enquirer must inevitably be referred to one or other of the panel of solicitors or firms who have volunteered to give advice free to clients referred through the Bureau."

K. M. OSWALD.

A Conveyancer's Diary

CHARITIES : GOVERNMENT PROPOSALS FOR LEGISLATION

THE committee which came to be known from the name of its chairman as the Nathan Committee was appointed to consider the changes in the law and practice (except as regards taxation) relating to charitable trusts in England and Wales which would be necessary to enable the maximum benefit to the community to be derived from them. It reported in December, 1952. The report is a comprehensive document, and there is very little, taking the subject in its national aspect, which the reader cannot learn from it. But the sections of the report of the greatest interest to lawyers were, naturally, those in which recommendations were made for legislation. One such recommendation produced the Charitable Trusts (Validation) Act, 1954, which sought (nobody yet knows whether successfully or not) to remove from any existing and effective instruments the particular vice which frustrated the charitable or benevolent intentions of the late Caleb Diplock. After a further interval of study, the Government presented in July last year a statement of its policy on the other recommendations of the Nathan report. I had expected that by this time a Bill would have been introduced dealing with these matters, but, as it appears that it will now be some time before legislation can be expected, some explanation of the Government's intentions may be of interest to the reader.

The statement of Government policy (Cmd. 9538) covers a great many matters of varying interest and importance. To the lawyer, two are of outstanding interest—the Government's reactions to the proposals to redefine " charity " for legal purposes, and to make large extensions of existing powers of alteration of the purposes of a trust which have become outmoded in the course of time. In both these matters, the Government has announced a very cautious policy indeed.

Defining " charity "

The nearest thing to a statutory definition of " charity " which exists is the definition contained in s. 66 of the Charitable Trusts Act, 1853 : " charity " is there defined as meaning every endowed foundation and institution taking or to take effect in England or Wales and coming within the meaning, purview or interpretation of the statute 43 Eliz. I, cap. 4, as to which, or the administration of the revenue or property whereof, the Court of Chancery has or may exercise jurisdiction. The preamble to the Elizabethan statute of charitable uses mentions a number of disparate purposes, as follows : the

relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and marines, schools of learning, free schools and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; the education and preferment of orphans; the relief, stock or maintenance for houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; aid or ease of any poor inhabitants concerning payment of Fifteens, setting out of soldiers and other taxes. (The spelling in this excerpt from the preamble has been modernised and the use of capitals has also been brought into line with our present usage; but the punctuation is that of the original.) From this list Lord Macnaghten made his celebrated classification of charity in its legal sense under the four heads of trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads.

On the foundation of the catalogue of purposes in the Elizabethan statute there has been built up a vast body of case law. The Nathan Committee was satisfied that with the exception of one or two points which could perhaps be considered doubtful (but in regard to which the committee thought that, on the whole, the doubts which had been expressed were unfounded) the content of the term "charity" as used in the law was neither too wide nor too narrow. The committee was also satisfied that the suggestion which had been put before it of defining the meaning of charity exhaustively in a statute, that is, by an enumeration of all the objects which were to be considered charitable, would be both impracticable and wrong in principle—impracticable because the enumeration would almost certainly prove incomplete from the beginning, and wrong in principle because it would fix the concept of charity for legal purposes in a rigid mould and deprive it of responsiveness to changes in the structure of society. The committee was further satisfied that the existing body of case law must be retained; if the primary object, that the content of charity should remain flexible, was to be secured, the law must continue to be judge-made, and it was (in the view of the committee) a complete delusion to suppose that to start with a clean slate, as some of the witnesses who were not lawyers had suggested, would reduce the volume of litigation. But the committee was attracted by the suggestion that a "Macnaghten" definition should be put on the statute book to replace the archaisms and inconveniences of the preamble to the Elizabethan statute, on the following lines: Charity in its legal sense should be deemed to include and always to have included trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads. The advantage of this substitution, it is stated in the report, is that it might give somewhat more freedom to the judiciary in applying the well-established principles of the existing law to the problems of an age of rapid and continuous change.

The Government's view

The Government's reaction to this, as stated in the recent White Paper, is that, while they have much sympathy with the committee's proposal, they believe that it is not practicable (judgments given by the court since the committee reported, it is added, have made this clearer than before); any new definition that could be devised would be new in substance as well as form, and if the case law is to be preserved, with it must be preserved, implicitly or explicitly, the preamble to the Elizabethan statute on which it is based. The Government's view is then summed up: the choice is between leaving things as they are and adopting a new definition which is different in substance; the committee's view that there is no reason to change the present content of charity is accepted, and therefore the Government do not propose that a fresh statutory definition should be enacted.

This is a very timorous decision. The law as it stands produces decisions which must seem anomalous to the layman. It draws, or sets out to draw, a rigid distinction between charity on the one hand and benevolence on the other hand, and yet, when the distinction comes to be applied, when the line has to be drawn, it is found that a gift of plate to a regimental officers' mess is treated as a charitable gift, and a gift for assisting the education of the children of employees of a limited company is treated as a non-charitable gift. Moreover, the consequences of a decision that a particular gift or trust is not charitable are not to subject the gift or trust to the disadvantages, comparatively speaking, which non-charitable gifts or trusts have to suffer as against charitable gifts or trusts; the consequences are that the gift or trust is declared totally invalid, and the subject-matter of it then usually falls to be distributed in a way which the donor, if he could recall it, would least of all desire.

Recent decisions

It is strange to see that the reason, or one reason, which the Government put forward for their view that a new statutory definition of charity is impracticable is that judgments delivered since the Committee reported "have made this clearer than before." I wonder what they had in mind in this connection? The last two cases of first-class importance on charitable trusts were, I imagine most people would agree, *Gilmour* v. *Coats* [1949] A.C. 426 and *Oppenheim* v. *Tobacco Security Trust Co., Ltd.* [1951] A.C. 297, and both these were considered by the Nathan Committee in its report. Since then the only decision on an English case in the House of Lords to be reported has been the *Royal College of Surgeons* case ([1952] A.C. 631). There is nothing in the speeches of the noble lords who heard that case to support the somewhat complacent view of the Government on the present state of the law of charitable trusts. Thus, Lord Morton of Henryton said in his speech (p. 650) that it seemed to him to be regrettable that in order to find out what is and what is not a charity according to English law it is still necessary to refer to the preamble to a statute passed in the reign of Queen Elizabeth I, and he went on: "I take this opportunity of saying that I hope the Legislature will soon embark on the task of giving a comprehensive statutory definition of 'charity'." And in the more recent case of the *City of Glasgow Police Athletic Association* [1953] A.C. 380 (a Scottish case, but one which, because of the very peculiar state of the law in this respect, had to be decided on English principles) the two members of the House who had been brought up in the Scottish law, Lord Normand and Lord Reid, expressed sympathy with the Scottish courts in their task of applying a very difficult branch of an alien law, and one of them at least indicated a view that this law was unnecessarily diffuse and capable of improvement.

"Charity" for tax and rating purposes

To these expressions of judicial opinion may be added the views of the Royal Commission on the Taxation of Profits

and Income, which sat under the chairmanship of Lord Radcliffe and reported in the summer of last year. In the Commission's opinion the present definition of charity is too wide, and a more limited and more precise definition, it is recommended, should be introduced into the tax code. A suggested definition was on these lines: the relief of poverty, the prevention or relief of distress, the advancement of education, learning and research, the advancement of religion (I wrote about this part of the Royal Commission's report in this Diary at 99 SOL. J. 594). The prospect of having two different standards of charitability, one for tax purposes and another for all other purposes, seemed to me (as it still seems) too horrifying to contemplate: but the opinion of the Royal Commission at least supports the view that a redefinition of "charity" is a practicable matter. In the meantime, another organ of government has seen fit (in the Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8) to place side by side for purposes of rating relief with institutions established for charitable purposes in the accepted legal sense other institutions of a charitable flavour only.

In all the circumstances it can only be hoped that, before framing legislation, the Government will reconsider its present decision against a new statutory definition of "charity." There is more to be said against this decision than appears in the White Paper.

"A B C"

Landlord and Tenant Notebook

AGRICULTURE: HOUSES, PREMISES, BUILDINGS

THOUGH not reported by law reporters, the recent setting aside of the decision of an arbitrator under the Agricultural Holdings Act, 1948, by Sellers, J., of which some account was given in a farming periodical, has some interesting features.

A farm was held under a tenancy agreement which contained tenant's covenants, *inter alia*, (i) to keep the interior of the buildings in good and tenantable condition; (ii) to keep the inside of the house and premises in good order and condition; and (iii) not to make any alterations to the house and premises without the landlord's consent in writing.

Without obtaining consent, the tenant made alterations to an implement shed and oil shed by installing a corn-drying plant therein.

Availing himself of his right under the Agricultural Holdings Act, 1948, s. 24 (2) (which sets out conditions under which subs. (1) is not to apply, no counter-notice being possible if they be fulfilled), the landlord served a notice under para. (*d*) requiring the tenant to remedy the alleged breach, and, there being no reaction, followed this with a notice to quit, duly stating the reason.

The tenant considered that the shed was not part of the *house and premises* and availed himself in turn of the remedy provided for by the Agricultural Holdings Act, 1928, s. 26 (1), and the Agriculture (Control of Notices to Quit) Regulations, 1948: determination by arbitration of a question arising under s. 24 (2), being a question arising out of the reason stated (regs. 4 and 5 (*a*)).

The arbitrator was called upon to determine whether the installation of the corn-drying plant in the shed was an alteration to the "house and premises" and decided this question of construction in the landlord's favour. Whereupon the tenant resorted to the High Court, asking that the award be set aside as being bad on the face of it. Sellers, J., granted the order sought.

The meaning of "premises"

Text-books faithfully record the fact that, strictly speaking, "premises" means all those parts of a lease which precede the habendum, Shepherd's Touchstone being the authority for this statement. Etymologically, there is something to be said for it. But modern instances of its use to cover parties, date, consideration, operative words, etc., must be rare indeed. The position to-day was tersely described by Goddard, L.C.J., in *Gardiner* v. *Sevenoaks Rural District Council* [1950] 2 All E.R. 84: "'Premises' is, no doubt, a word which is capable of many meanings. How it originally became applied to property is, I think, generally known. It was from the habit of conveyancers when they were drawing deeds of conveyance referring to property to speak of 'parcels.' They set out the parcels in the early part of the deed, and later they would refer to 'the said premises,' meaning strictly that which had gone before, and gradually by common acceptance 'premises' became applied, as it generally is now, to houses, lands, shops, or whatever it may be, so that the word has come to mean generally real property of one sort or another." (The transition might, I suggest, also be due to slackness in omitting the word "demised," which limited "premises" to parcels.)

One may consider the conveyancers' habit a bad one and wish that they had taken a leaf out of Scots law books and adopted the term "subjects"; but the popular acceptance is a fact—and so is the capability of many meanings.

There would be little point in going through the illustrations of those many meanings; the case before Sellers, J., was clearly one in which the application of the *noscitur a sociis* maxim was called for, and the learned judge reached his conclusion on those lines. There was a general, comprehensive covenant to keep the interior of the *buildings* in repair; then two covenants relating respectively to the maintenance and to alterations to the *house and premises*. Sellers, J., was driven to find that the obligation to ask for consent did not affect alterations to the sheds.

Perhaps one decision might be usefully mentioned, though a somewhat extreme case. In *Minton* v. *Geiger* (1873), 28 L.T. 449, the tenant of a house let furnished for seventeen weeks had helped himself to the hay crop yielded by a meadow and was sued for trespass and trover. The agreement gave him "All that the furnished *house and premises* together with the gardens, pleasure grounds, coal-house and stabling thereto belonging, situate . . ." Bramwell, B., pointed out that the word "premises" was the only one which could possibly, under other circumstances, include the meadow. "Here the word is evidently to be taken in its *ordinary sense*, as something *intimately connected* with the house." Kelly, C.B., said "closely and intimately connected with" the house. In view of these statements, it seems doubtful whether the agreement before Sellers, J., did not really express the intention of the parties; the learned judge remarked that it might not, but it seems plausible that the landlord was more

concerned about what might happen to the residential part of the property than about the agricultural buildings.

Tenant's remedies

The dispute might have been disposed of, at an early stage, by either party seeking a declaration in the Chancery Division. (There would be no possibility of the tenant's invoking the Landlord and Tenant Act, 1927, s. 19—consent not to be unreasonably withheld—for that enactment does not apply to agricultural holdings (s. 19 (4).)

But at two later stages there were alternative courses open to the tenant. When the notice to quit was served, he was, it seems reasonably well established, not obliged to seek to impugn it by arbitration under the Agricultural Holdings Act, 1948, s. 26: that section says "(1) The Minister may make regulations (*a*) for requiring any question arising under s. 24 (2) of this Act to be determined by arbitration under this Act"; it was said by Denning, L.J., in *Budge* v. *Hicks* [1951] 2 K.B. 335 (C.A.), that this means that the Minister could make regulations requiring any such question to be determined by arbitration, but, unfortunately, he had not done so, for the language used by the Agriculture (Control of Notices to Quit) Regulations, 1948, reg. 4, is: "It shall be open to the tenant." Somervell, L.J., considered that it was the intention of the Act that technical matters with regard to breaches of good husbandry should be decided, and decided rapidly, by arbitration, by persons familiar with the technical points, but was nevertheless inclined to the view that there was a fatal absence of any clear provision for making arbitration the only procedure. The question was not, as it transpired, a vital one in the case, the notice to quit being held bad as not satisfying the requirements of s. 24 (2); and the same applies to what was said in *Jones* v. *Gates* [1954] 1 W.L.R. 222 (C.A.); 98 Sol. J. 61, decided on the ground that the question raised was not a "question arising out of the reason stated in the notice to quit." But in that case, too, *obiter dicta* favoured the view that nothing but perfectly plain terms of exclusion would suffice if the jurisdiction of courts of law was to be excluded.

It is, perhaps, remarkable that it was not suggested, in the case which I am discussing, that the question was not one arising out of the reason stated in the notice to quit; it was certainly not a technical one of the kind visualised by Somervell, L.J. The arbitrator, who was a land agent, was in fact called upon to decide a question of construction, purely one of law.

And this brings me to the second set of alternatives: the tenant (or landlord) could have sought a direction in the local county court, to state the question in the form of a special case for that court's opinion, or the arbitrator could have so stated it *proprio motu:* Agricultural Holdings Act, 1948, Sched. VI, para. 24 (the "opinion" is, as was recently held in *Lloyds Bank, Ltd.* v. *Jones* [1955] 3 W.L.R. 5 (C.A.) (see 99 Sol. J. 506), appealable).

The Sixth Schedule does not, however, permit of the making of an award in the form of a special case, or of the stating of such a case once the award has been made; and it may that for these reasons the tenant preferred to await the result and then seek redress in the High Court, redress not provided for in the Agricultural Holdings Act, 1948. Under an earlier Act (Agricultural Holdings Act, 1908), it was held that the inherent jurisdiction of the High Court to set aside an award on the ground of error had not been taken away: *Re Jones and Carter's Arbitration* [1922] 2 Ch. 599 (C.A.); if there had been an intention to create a complete code, such intention had not been carried out; and there is nothing in the 1948 Act to suggest that there is such an intention. And Sellers, J., rejected an argument that the arbitrator's decision was final.

The tenant appears also to have asked the court, presumably in the alternative, to remit the case to the arbitrator for reconsideration; this application may have been based on the Arbitration Act, 1950, s. 22; Sellers, J., did not allow him the costs so incurred. But the landlord must have felt like a player of the game of snakes and ladders whose throw has landed his counter on the square, near his goal, numbered (I think) 98, and occupied by the head of a particularly long snake.

R. B.

HERE AND THERE

HIGH AMATEUR STATUS

Professionals like to think that "amateur" is synonymous with "bungling." The grown-ups and the middle-aged prefer to treat as mythical the gallant boy or girl, so dear to Henty and his successors, who saves the day desperately compromised by blundering elders. The litigant in person, says the lawyer smugly, has a fool for his client. But sometimes the amateur does pull it off or, at any rate, put up a startlingly good show. To go no further back than the present century, Horatio Bottomley in his prime did better for himself in the courts than any counsel could have done and in that fantastic prosecution of Pemberton Billing during the first World War the defendant in person made hay of judge, opponents and witnesses on an epic scale. Sometimes an amateur display has led on to a professional qualification. The late Mr. S. P. J. Merlin, who still lives in his book on the Landlord and Tenant Act, was encouraged to come to the Bar by the satisfactory performance he found himself putting up in court in some trouble about a bicycle. There is a practising member of the Bar to-day whose interest in the law dates from the occasion when his wife made a sensational appearance in person in the Chancery Division in a test case affecting a great many of her neighbours and was dubbed by the newspapers "the tenants' K.C." It was, however, her husband who eventually decided to come to the Bar. Nor has the race of brilliant amateurs come to an end. At Kingston Assizes recently an eighteen-year-old labourer, charged with a serious offence against a girl, chose to defend himself and did so with the utmost self-confidence, referring easily to prosecuting counsel as "my learned friend," and reminding the jury that he himself had not any legal training: "This is the first time I have ever been in a court, I think." (The jury were afterwards to learn that he had been six times before a juvenile court, had absconded twice from an approved school and was recently released from Borstal on licence.) Though he did not save himself from conviction, he was, no doubt, pleased to hear Jones, J., remark that he cross-examined the girl with very great intelligence, as indeed he had. Altogether happier, as well as more successful, was the brilliant amateur performance of an attractive girl called Sheila Williams, six months a solicitor's clerk and before that a telephonist, who recently astonished Judge Clothier at Lambeth County Court by

discussing hire purchase with him as a mistress of her subject. "You seem to know a great deal about this," he said. "Do you understand the Hire Purchase Act?" "Yes, I think so," she answered. "Then you had better take me into your school; I'm not sure that I do," said the judge. And in due course he made the order she asked for. And what next for her? A legal qualification? No, a matrimonial one in a few months; so she's sensible, too, to put first things first; one is (or ought to be) a human person before one is a lawyer; not every career man or woman remembers that. For the moment she can't afford formal law studies; "but if I had the chance I would certainly take law." On her present form it looks as if it would be worth some far-sighted solicitor's while to endow her and groom her for partnership.

ANSWER TO CORRESPONDENT

LAST week a correspondent took exception to what he called my "spirited defence of hanging" in this column three weeks ago. I am sorry he saw it that way, since I went very little further than to cope with some of the more obvious fallacies of the abolitionists. They often seem so annoyed with those who do not quite agree with them as to be unaware that they are misquoting and misrepresenting. As G. K. Chesterton once said on another subject: "It is not the proposals of these reformers that I feel to be false so much as their temper and their arguments." I am not nearly so certain that abolition is wrong as that the defences of abolition are wrong. Mr. Arthur Koestler, whom I criticised in some respects, did at least put the real problem in a couple of sentences: "The wrong question has been debated *ad nauseam*, whether the death penalty is a deterrent from crime—which, of course, it is. The right question is whether it is a unique and irreplaceable deterrent." From that it is not, I think, unfair to infer that Mr. Koestler anyhow believes in the existence of the calculating murderer (male or female) whom my correspondent apparently regards as "mythical." My reference to this character was the only "old mouldering chestnut" (to quote my correspondent's elegant metaphor) which among the views attributed to me in his rather incoherent letter I recognised as being a fairly accurate reproduction of anything I had said. In case he was too angry to read to the end of the page may I reiterate my closing sentences. "There may be other ways of dealing with [the murderers]; one hopes there are. (In the Arcadian Jesuit mission state in eighteenth century Paraguay there was no capital punishment, only exile from Utopia achieved). But if in our day and time there are other alternatives 'double think' arguments will not convince the thoughtful."

EXPERIMENT

IN climax my correspondent cries rhetorically: "Sir, let us test Mr. Roe," and proposes a ten-years experimental suspension of executions. The point, of course (if it is not pedantic to say so), is not to test Mr. Roe but to test the facts. If it is really insisted that I should express my personal views (instead of coping with fallacies and asking politely that the abolitionists should examine the effective alternatives to the death penalty) I find it very hard to work up any enthusiasm on either side of the controversy. One ought not perhaps to be too much irritated by the attempts of some abolitionists to elevate to the status of a moral principle a proposal which is not a moral principle at all. Hanging (like murder) is certainly revolting just as the slaughter-house is revolting, and the disgust which drives some men to abolitionism drives others to vegetarianism, but mere nausea is not a guide to anything. A ten-year experimental suspension of executions? Well, if one really must be so tender to *messieurs les assassins* as to stake and risk innocent lives (it may be only a very few innocent lives) for their survival it would certainly have some sociological interest. Each combination of social, economic and national conditions has its own peculiarities. The price, at the most pessimistic, is hardly likely to be as high as the price we pay in road casualties for road transport and if the worst happens we can always do as New Zealand did when, after a spate of particularly brutal murders in 1950, they restored the death penalty abolished in 1941 and in abeyance since 1935. One would not dogmatically block the experiment if there was an overwhelming demand for it in the nation and not just a narrowish majority in the House of Commons but, without being dogmatic, my own provisional reaction in the matter of the sacredness of human life is still "*Que messieurs les assassins commencent.*"

RICHARD ROE.

THE SOLICITORS (AMENDMENT) BILL

The Solicitors (Amendment) Bill passed through the Committee Stage in the House of Lords in the short space of half an hour on Tuesday of last week. Lord Cohen was again in charge and the only amendments on the Order Paper were in his name and, in one case, in the name of the Lord Chancellor.

On the question that cl. 1 be agreed, Lord Silkin professed himself as still unconvinced that the flat rate method of contribution by each practising solicitor to the compensation fund was a fair one. Lord Silkin felt that, had it been possible, some assessment on the basis of the amount passing through a solicitor's client account or on his means would have been fairer. Lord Cohen said, in answer, that he did not wish to repeat the arguments used on the Second Reading, but, had he done so, he believed they would have convinced their lordships.

Two amendments were then moved by Lord Cohen designed to enable the quorum of the Disciplinary Committee, or a division thereof, to number two in place of the normal three, unless any of the parties objected. This amendment was intended to cover such cases as those in which the respondent does not appear.

On cl. 13, dealing with the remuneration of solicitors, Lord Cohen moved an amendment making it clear that counsel's fees, though not legally recoverable, are a liability properly incurred by a solicitor on behalf of his client, and may be included in the solicitor's bill, though unpaid, subject to being so described and to the taxing officer not allowing such fees unless they have been paid before completion of the taxation.

The question of the qualifications required by a barrister in order to enable him to disbar himself and become a solicitor arose on cl. 14. Lord Cohen's amendment clarified the position so that so long as a barrister is recognised by The Law Society or certified by the Attorney-General as having been in practice or in employment as a barrister for the prescribed period that is sufficient to qualify him.

The Lord Chancellor's amendment was in the form of a new clause providing for certain of the rule-making powers under the Solicitors Act to be exercised by Statutory Instrument and thereby to be printed and available to the public. There has been some doubt on the point and the new clause makes the position clear.

The Bill may be said to have had a thorough but easy passage so far. It is a perfect example of the businesslike and useful work which can be done in the House of Lords on somewhat technical, but not unimportant, measures. The Bill comes up again on Report and Third Reading in the Lords within the next week or two and will then go before the House of Commons.

REVIEWS

A Life for a Life? The Problem of Capital Punishment. By Sir ERNEST GOWERS. 1956. London: Chatto and Windus. 7s. 6d. net.

Capital Punishment as a Deterrent and the Alternative. By GERALD GARDINER, Q.C. 1956. London: Victor Gollancz, Ltd. 6s. net.

It is unlikely that controversy over capital punishment will have been stilled by the Commons' vote. Rightly or wrongly, and for profound reasons which it is not now relevant to examine, controversy on penal reform in the main follows party alignments. It has been clear for many years that the majority of Conservative M.P.'s favour the retention of the death penalty for murder while the majority of Labour M.P.'s oppose it. What mystifies large numbers of people is why a House of Commons predominantly Conservative, in which a few Labour members oppose abolition, should vote for abolition by a comfortable majority against the Government's advice. Sir Ernest Gowers supplies a large part of the answer. Converts often become excessively zealous: not so Sir Ernest, whose book achieves his aim of presenting the case for abolition without bias and in the spirit of a judge rather than an advocate. Sir Ernest records that before he served as Chairman of the Royal Commission, he had given no great thought to the problem: he would probably have said that he was in favour of the death penalty and been disposed to regard abolitionists as people whose hearts were bigger than their heads. In the end he became convinced that the abolitionists were right and in this book he explains why. In only one respect do we find cause for criticism. Sir Ernest devotes his first chapter to describing executions. Ordinary, sensitive beings are revolted by executions just as they are revolted by war. The question is whether such horrors must be endured to prevent worse befalling.

Mr. Gerald Gardiner is no recent convert. For many years he has held views on this and other subjects which have not been accepted by the majority, but what is beyond dispute is the sincerity with which he holds those views, the rational arguments with which he sustains them and the tolerance and charity which he displays towards those who differ from him. These personal qualities do not prevent his book from being a ruthless analysis of the case for capital punishment and as compelling an argument for abolition as Sir Ernest Gowers'.

Those whose minds are not closed and who wish to understand the intellectual and practical, as distinct from the emotional and religious, arguments for abolition should read both these short books, which have the additional merits of being inexpensive and, as could only be expected from the author of "The Complete Plain Words," well written.

The United Kingdom. The Development of its Laws and Constitutions. England and Wales; Northern Ireland; The Isle of Man. Under the general editorship of GEORGE W. KEETON, M.A., LL.D., and DENNIS LLOYD, M.A., LL.B., with specialist contributors. pp. xiv and (with Index) 523. 1955. London: Stevens & Sons, Ltd. £3 3s. net.

The United Kingdom. The Development of its Laws and Constitutions. Scotland, by T. B. SMITH, M.A., Member of the Faculty of Advocates in Scotland, of Gray's Inn, Barrister-at-Law. The Channel Islands, by L. A. SHERIDAN, LL.B., Ph.D., of Lincoln's Inn, Barrister-at-Law. pp. xi and (with Index) 692. 1955. London: Stevens & Sons, Ltd. £3 3s. net.

Although these two new works together form the volume numbered 1 in the British Commonwealth series, volumes dealing with some of the daughter countries have already appeared. This accounts, according to the preface, for a certain comprehensiveness in the survey of English law which we should have thought one of the first *desiderata* in any event. Any desire to write an institutional treatise on English law or a volume of modern legal history is disclaimed in the same preface. "The result," we are told, "is rather a survey of the most important developments in the law, and of some of the problems which have arisen as a result of those developments." Yet, for reasons of space, the conflict of laws has been omitted, though it is recognised that in it there have been important judicial contributions. You cannot at the same time be comprehensive and rigidly economical of space.

Happily, the English part of the work itself belies in its thorough covering of the chosen ground the dispirited mood of the preface. In some 400 pages a great many of the important divisions of our law are analysed from an historical and critical viewpoint so as to bring into relief the trends, social, mercantile snd sometimes political, which have shaped their principles to changing ideas and needs. Particularly successful is this method of treatment in the chapters on criminal law and company law, much as we question the statement on p. 119 that fines are rarely imposed for indictable offences. It seems to us doubtful whether the history in some other chapters is carried far enough back for a full understanding of the present state of the law. We have especially in mind the chapter dealing with procedure, in regard to which we practitioners labour very steadfastly on the stint marked out by our forefathers. Granted that the authors' primary purpose is probably to provide a standard for comparative research, the reader whose eye lights upon the subtitle expects rather more weight to be given to the word "development" than he finds in the passages dealing with practice—the scholar's Cinderella as always.

It is when he comes to Mr. Holland's chapter on the Isle of Man and to the second book on Scotland and the Channel Islands that the English lawyer with a taste for comparative studies will expect to come into his own. The authors of these parts will excuse us if we do not endeavour to pick holes in the substance of their contributions! Professor Smith's treatment of Scots law (530 pages) is the most comprehensive and informative of all. Employing a literary style attractive enough to surmount the generous admixture of Latinisms always affected by our Northern cousins, he contrives to describe in considerable detail the Scottish system of jurisprudence and of justice and the rules of the law of Scotland. Their logical and distinctive characteristics are clearly brought out.

Very much briefer is the chapter on the Channel Islands. In this, constitutional matters are adequately summarised, but when we read that an investigation of the various branches of Channel Islands substantive and adjective law is not possible on grounds of space and because it has little in common with English law, we wonder whether we have understood the purpose of the series at all. Surely the ancient custom of the Duchy, in common with the law of England, deals with land and commerce and rights and duties. Or is the point that there has been insufficient development even to form contrasts with particular tendencies in the rest of the Commonwealth?

Summing up, we find this composite volume of absorbing interest in its content though not, to our mind, perfectly balanced in its scope.

The Conflict of Laws. Third Edition. By R. H. GRAVESON, LL.D., Ph.D. (London), LL.D. (Sheffield), S.J.D. (Harvard), of Gray's Inn, Barrister-at-Law. London: Sweet and Maxwell, Ltd. £2 net.

The handiness of this textbook, on a part of the law which has led other writers into garrulity, remains a bull point in its favour with students. Not that the author has by any means ignored the modernity of his subject, by itself a factor tending towards discussion of new points rather than to categorical statements of settled law. But the text is built up from the English judicial authorities and statutes, which are what the student and the practitioner have to get into their heads. The theorists have to be content with mention largely in footnotes and the useful bibliographies of further reading which the author has provided. Dr. Graveson has given effect in this fresh edition to upwards of seventy-five new statutes and decisions, and has treated in an informative way not only the actual recommendations of the Private International Law Committee on Domicile but also the possible results of the adoption of those proposals. The recent cases covered include, besides those such as *Arab Bank, Ltd.* v. *Barclays Bank* and the *Ramsay-Fairfax* case, which have an obvious concern with international law, less likely examples such as *Finnegan* v. *Cementation Co.* and *Entores* v. *Miles Far East Corporation*. As our legal civilisation progresses, the subject-matter of the Law Reports becomes less and less categorised.

TALKING "SHOP"

March, 1956.

TUESDAY, 6TH

Mr. *C* consults me with a view to issuing a writ for breach of promise. The conversation has to be conducted through his housekeeper, Mrs. *X*; I despair of reproducing its absurdities. At first it is unsettling to hear one's *oratio obliqua* freely rendered in *oratio recta* (and what is worse, every euphemism stripped back to its native thought), but it cannot be denied that the method has punch :—

Escrow : Sue her for breach of promise? There is nothing in law to stop you, but I can't recommend it. In practice it is women who bring breach of promise actions and men who defend them. In these days of sex equality it may seem unfair, but so it is. Even a woman plaintiff needs a strong case to overcome contemporary dislike of these actions. No—I really can't advise it. You would get no sympathy from a jury and very little from the bench. Of course, I must agree that this lady has behaved abominably, but when it comes to damages that feature may be more to her advantage than yours.

Mrs. X : He says she's a —— and you're well rid of her, just like I said. You can't bring no action, and even if you could you'd only make a —— of yourself. (*Aside*) Such an impetuous gentleman!

E. : Ahem, quite so, or nearly so. At all events, what Mrs. *X* has hinted about publicity is an important point. I was coming to that . . .

Mrs. X : He says, do you want your photograph in the *Daily Mirror*?

E. (*tempted*) *:* With hers alongside? (*Hastily*) No, Mrs. *X*, don't bother . . . (*Changing the subject*) Why not wait for her to return the jewellery? If she doesn't, you could take proceedings in the county court to recover it. (*Thinks :* query.) Of course, I shall want to know the value of the jewellery. And I shall want to be sure that you gave it upon condition that she would return it if the marriage did not take place, though that can be assumed of the engagement ring. (*Thinks :* if that isn't good law it ought to be.)

Mrs. X : He says, give her till Tuesday to return the jewellery, and if she doesn't you can make her smart for it in the county court. But you're not to bother with that stuff of your grandmother's. It's not worth a fiver.

After much more in the same vein, we come to that most satisfactory of all conclusions—to do nothing. The visitors depart, and after the manner of Mr. Worldly Solicitor I am left to ruminate upon the pungent and forthright methods of Mrs. *X*. Poor impetuous, puzzled Mr. *C* had done nothing to deserve such shock treatment. I yield momentarily to the nostalgic vision of Mrs. *X* in process of administering shock treatment where it is richly merited, but the filing cabinet itself appears to tremble at this image of Grand Guignol. Truth, without its cellophane wrappings, uncorked and 95 per cent. proof, is too crude a spirit for our queasy age.

FRIDAY, 9TH

Memoria technica about the handing over of documents and papers to ex-clients: (i) don't (unless you wish) hand over anything until he has paid the outstanding bill; (ii) if papers demanded, as well as documents, there must be included all drafts and copies made in the course of business, also letters to you from third parties and (at least if paid for) copies of your letters to them, but *not* the client's own letters to you nor letter-book copies of your letters to him; (iii) if another solicitor takes over, seemingly it is proper to make a charge for scheduling, but not otherwise; and (iv) the result of this process of dismembering the file, as may be readily seen, is to cause the several bundles (yours and the ex-client's) to look as lively as any other dismembered corpse.

Authorities are: (i) General law as to solicitor's lien; (ii) Solicitors Remuneration Order, 1883, para. 3, Law Society's Digest, p. 213; Digest Nos. 1647 and 1648, but see also 1659; (iii) Opinion of Council, No. 1472 of 1953, and Digest Nos. 1474, 1481 and 1483; (iv) past experience of disgruntled contributor.

WEEK-END REFLECTIONS

More about Rookery Wood. A five-line letter to the Department of Botany, asking *why* the wood had been scheduled as of scientific interest, has produced another thrilling instalment. "As you may know, in Norman and Plantagenet times, Rookery Wood was part of the former Royal Forest of Leicestershire and Rutland . . . There are comparatively few such woodlands on the Middle Lias Clays remaining, and it is to be hoped that when the owners realise how valuable a study of them can be to scientists and natural historians, they will be encouraged to manage them as has been the practice for centuries, rather than have them clear-felled for development purposes. On these Middle Lias Clays . . . the pedunculate oak and ash are the dominant trees, and as your late client would have known, these trees regenerate freely here."

Frankly, I don't know how much my late client would have known or cared about the fertility of pedunculate oak and ash, but for my own instruction I have looked up "pedunculate" in the dictionary; peduncle means "stem of cluster of flower or fruit, esp. one bearing pedicels" and I take it that the interchangeable adjectives, peduncular and pedunculate, mean, by and large, stem and clusterish.

But to resume, "The associated species are usually wych elm, aspen, hazel, maple, dogwood, buckthorn, holly and privet, with a dominant underflora of blackberry, bracken, dog's mercury and tufted hair grass." And, indeed, we know the type of thing only too well. Every September it is the same. My wife declares that if she does not make the blackberry and crab-apple jelly at once, we shall lose all the crabs; and out we go. You would be surprised to learn how often I have torn my trousers on dominant underflora. Yet the wood that we favour for these expeditions has many happier features in common with Rookery Wood, as described by my correspondent, including as she says "mammalian, reptilian and bird fauna." Well, perhaps that is going too far; a few small birds, one or two rabbits (pre-myxomatosis) and my two dogs (male: thus query mammals) and no snakes to date. Also we cannot compete with Rookery Wood in the matter of what my correspondent calls "lepidoptera and coleoptera," i.e., moths, butterflies and beetles.

Finally, I am referred to Domesday Survey (1086) and several other works, such as The Cryptogamic Flora of Leicestershire and Rutland (Briophytes) and Early Stages in the Physiographic Evolution of a Portion of the East Midlands. Twelve in all, if I include Domesday Survey and an alliterative but as yet unpublished work entitled List of Lepidoptera of Leicestershire (1954). Well, we certainly asked for it.

"ESCROW"

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

House of Lords

HOUSING: SALE OF HOUSES PROMOTED BY LOCAL AUTHORITY

Glasgow Corporation *v.* Western Heritable Investment Co., Ltd.

Viscount Simonds, Lord Reid, Lord Tucker, Lord Keith of Avonholm and Lord Somervell of Harrow

1st March, 1956

Appeal from the Second Division of the Court of Session.

By s. 3 (2) of the Housing (Financial Provisions) Act, 1924 ". . . houses the construction of which is promoted by a local authority in accordance with s. 2 of the [Housing, etc., Act, 1923] . . . shall be deemed to be subject to special conditions if . . . the local authority . . . undertake . . . that the following conditions will be complied with in relation to the houses: . . . (*c*) that no house shall be sold . . . except with the consent of the Minister . . . " (in Scotland the Secretary of State for Scotland). In respect of houses so promoted the local authority was entitled to an annual subsidy from the Treasury. The respondents, who were private builders, having applied to the appellant corporation for financial assistance in erecting houses within the Act, received from it an annual subsidy in respect of each house on the terms, *inter alia*, that each house should comply with the special conditions of s. 3 (2) of the Act of 1924, including condition (*c*). For several years the respondents received annual subsidies accordingly. The Second Division held that they were entitled to sell the houses without the consent referred to, which had been refused. The corporation appealed to the House of Lords.

VISCOUNT SIMONDS said that the appellants contended that the refusal of consent operated as an absolute bar to the sale by the respondents of houses which were their absolute property, for two reasons. The first rested solely on the terms of the Acts, the second on a contractual basis. Under the Acts the position was that a local authority could get (*a*) a lump sum grant or (*b*) an annual contribution without special conditions or (*c*) under the Act of 1924, an increased annual contribution with special conditions attached to the grant. It could sell such houses as it thought fit, subject only to the possible penalty of the contribution of the Minister, if it was on a higher scale under the Act of 1924, being reduced. But the Act had to provide for (*a*) houses provided by the local authority itself and (*b*) those " promoted " by the local authority, i.e., houses built by private enterprise in respect of which they had undertaken to give financial assistance. In regard to those houses the restriction on sale contained in s. 3 (2) of the Act of 1924 was that " no house shall be sold . . . except with the consent of the Minister, which may be absolute or subject to such reasonable stipulations as the Minister thinks proper." His lordship could not accept the contention that the result was to make a house inalienable for all time. The right of an owner freely to dispose of his property was so inherent in ownership that it could not be displaced save by very clear words. That was not the case here. The scheme of the Act was that the Minister might withdraw or reduce his future contributions. The receipt of aid was made conditional on the compliance with conditions. The alternative ground was based on an alleged contract between the parties, but on its true construction the contract did not impose an absolute obligation against sale without consent. The purpose of introducing the words in question into the bargain between the appellants and the respondents was to ensure that the obligation of the former to the Secretary of State was fulfilled so that they might not remain liable to the respondents when he was no longer liable to them. The proper construction of the bargain was that so long as the terms were complied with the respondents might expect a subsidy; if these were not complied with, they would be in mercy. The appeal should be dismissed.

The other noble and learned lords agreed in dismissing the appeal. Appeal dismissed.

APPEARANCES: *Johnston*, Q.C., and *Douglas Reith* (both of the Scottish Bar) (*Martin & Co.*, for *Campbell, Smith, Mathison and Oliphant*, W.S., Edinburgh, and *The Town Clerk*, Glasgow); *The Dean of the Faculty*: *C. W. Graham Guest*, Q.C. (of the English Bar, Q.C. of the Scottish Bar), and *A. M. Johnston* (of the Scottish Bar) (*Stilgoes*, for *Gray, Muirhead & Carmichael*, W.S., Edinburgh, and *Breese, Paterson, Chapman*, Glasgow).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] [1 W.L.R. 717

CLAIM FOR CONTRACTION OF PNEUMOCONIOSIS: ONUS OF PROOF

Bonnington Castings, Ltd. *v.* Wardlaw

Viscount Simonds, Lord Reid, Lord Tucker, Lord Keith of Avonholm and Lord Somervell of Harrow

1st March, 1956.

Appeal from the First Division of the Court of Session ([1955] S.L.T. 225).

The employment of a steel dresser exposed him to silica dust emanating from the pneumatic hammer at which he worked and also from swing grinders. No dust extraction plant was known or practicable for use with the hammer, but though the swing grinders were fitted with such equipment they were not kept free from obstruction, and in this respect the factory owners were in breach of their statutory duty under reg. 1 of the Grinding of Metals (Miscellaneous Industries) Regulations, 1925. The steel dresser, having contracted pneumoconiosis in the course of his employment, sued them for damages. The First Division of the Court of Session affirmed a decision in his favour. The factory owners appealed to the House of Lords.

VISCOUNT SIMONDS said that he agreed with the opinion of Lord Reid that the appeal should be dismissed.

LORD REID said that it was admitted for the appellants that they were in breach of reg. 1 of the Grinding of Metals (Miscellaneous Industries) Regulations, 1925, in that for considerable periods dust from the swing grinders escaped into the shop where the respondent was working owing to the appliances for its interception and removal being choked and therefore inadequate. If his disease resulted from his having inhaled part of this dust the appellants were liable to him in damages; if it did not result from that they were not liable. The view that the onus was on the appellants to prove that this dust did not cause the disease was based on a passage in *Vyner* v. *Waldenberg Bros., Ltd.* [1946] K.B. 50, 55. The onus there was on the defendants to prove delegation (if that was an answer) and contributory negligence, but to go beyond that was erroneous. In principle a plaintiff must prove not only negligence or breach of duty but also that the fault caused or materially contributed to his injury. An employee suffering from an injury could not sue his employer merely because there was a breach of duty and it was possible that his injury might have been caused by it. The employee must in all cases prove his case by the ordinary standard of proof in civil actions; he must make it appear at least that on a balance of probabilities the breach of duty caused or materially contributed to his injury. Pneumoconiosis was caused by the gradual accumulation in the lungs of minute particles of silica inhaled over a period of years. The source of the respondent's disease was the dust from both the pneumatic hammers and the swing grinders. The question was whether the dust from the latter materially contributed to the disease. A contribution could not be too large to come within the principle *de minimis non curat lex* but yet too small to be material. It was probable that the greater proportion of the noxious dust inhaled by the respondent over the whole period came from the hammers but the proportion from the swing grinders was not negligible. He was inhaling the general atmosphere all the time and there was no evidence that the concentration of noxious dust above his hammer was so much greater than the concentration in the general atmosphere that the special concentration of dust was substantially the sole cause of his disease. It was proved that the swing grinders in fact contributed a quota of silica dust which was not negligible and did help to produce the disease. That was enough to establish liability and the appeal should be dismissed.

The other noble and learned lords agreed that the appeal should be dismissed. Appeal dismissed.

APPEARANCES: *Shearer*, Q.C., and *R. H. M'Donald* (both of the Scottish Bar) (*Lawrence Jones & Co.*, for *Macpherson and Mackay*, W.S., Edinburgh); *The Dean of the Faculty*: *C. W. Graham Guest*, Q.C. (of the English Bar, Q.C. of the Scottish Bar), and *Emslie* (of the Scottish Bar) (*W. H. Thompson*, for *Donald Shaw & Co.*, Edinburgh).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 707**

SALE OF GOODS: EXPORT LICENCE: CONTRACT MADE IN LONDON: SHIPMENT FROM FOREIGN PORT: DUTY TO APPLY FOR LICENCE

A. V. Pound & Co., Ltd. *v.* M. W. Hardy & Co., Inc.

Viscount Kilmuir, L.C., Viscount Simonds, Lord Morton of Henryton, Lord Reid and Lord Somervell of Harrow

1st March, 1956

Appeal from the Court of Appeal ([1955] 1 Q.B. 499; 99 SOL. J. 204).

By a contract of sale made in England the respondents (the buyers) agreed to buy from the appellants (the sellers) a quantity of Portuguese turpentine f.a.s. buyers' tank steamer at Lisbon, payment by confirmed irrevocable credit in sellers' name in Lisbon. When the contract was made the sellers knew that the destination of the goods was Rostock in Eastern Germany. The buyers duly sent to Lisbon a tank steamer chartered for Rostock. At Lisbon the goods had been assembled by the sellers' Portuguese suppliers. Under Portuguese law turpentine could not be exported without an export licence, obtainable only by the sellers' suppliers, who were not disclosed to the buyers. The suppliers applied to the appropriate government board for a licence to export to Rostock; this was refused, and the turpentine could not be delivered f.a.s. the ship. Each party to the contract alleged that the other was in default under it in failing to obtain the licence. The Court of Appeal, reversing a decision of McNair, J., in an appeal on arbitration proceedings, decided in favour of the buyers. The sellers appealed to the House of Lords.

VISCOUNT KILMUIR, L.C., said that it was emphasised on behalf of the sellers that there was no finding that they knew of the Portuguese licensing system when they made the contract. The first broad issue was whether it was the duty of the buyers to provide a vessel, alongside which the sellers could lawfully place the turpentine, or whether, on the licence for the destination desired by the buyers being refused, the buyers were excused from the performance of the contract. It was common ground that the proper law of the contract was English. The appellants submitted that the impact of Portuguese law was restricted to modes of performance in accordance with the limitations which decisions on the subject had indicated. They contended that the principles applicable were those laid down in *H. O. Brandt & Co.* v. *H. N. Morris & Co., Ltd.* [1917] 2 K.B. 784, but there could not be extracted from that case a general rule that on every f.o.b. or f.a.s. contract the buyer must supply a ship into which or alongside which the goods could legally be placed where there existed a prohibition on export except with licence. This view was supported by an examination of *D. McMaster & Co.* v. *Cox, McEuen & Co.* [1921] S.C. (H.L.) 24, 26, 27. The outcome must depend on the contract and the surrounding circumstances in each case. The sellers could only succeed in this action if they established that there was a breach of contract by the buyers. The essential facts were (1) that the sellers knew that the buyers wished to export to Eastern Germany, and (2) that only the suppliers (whose identity the sellers deliberately withheld from the buyers) could apply for the necessary licence. In these circumstances it was for the sellers to do their best to obtain a licence for Eastern Germany through the suppliers and, if they could not do so, further performance of the contract was excused. The appeal failed.

The other noble and learned lords agreed in dismissing the appeal. Appeal dismissed.

APPEARANCES: *Roche*, Q.C., and *Andrew Bateson* (*Thomas Cooper & Co.*); *Caplan*, Q.C., and *Neil Lawson* (*Crawley and de Reya*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 683**

Court of Appeal

ESTATE DUTY: SETTLEMENT OF LIFE INSURANCE POLICIES

***In re* Barbour's Policies of Assurance**

Westminster Bank, Ltd. *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Birkett and Romer, L.JJ. 21st February, 1956

Appeal from Harman, J.

By a settlement made in 1929, a settlor assigned to the bank on trusts declared in the settlement two policies of assurance on his life. One of the policies was fully paid at the date of the settlement and the other by the time when the settlor died. The settlor also paid to the bank £12,000 in cash on trust.

Clause 2 of the settlement provided: "The bank shall out of the proceeds of the . . . policies pay all death duties if any leviable at the death of the settlor in respect thereof . . . and shall invest the residue of the said moneys and shall forthwith invest the said sum of £12,000 (which moneys and the property for the time being representing the same and the accumulations of the income thereof . . . are hereinafter called 'the trust fund') in the name of the bank" in investments mentioned in the settlement. Clause 3 directed the bank to accumulate the income of the trust fund until 30th June, 1942. Clause 4 provided that after that date the bank should "pay the income of the trust fund and the accumulations thereof and of the investments for the time being representing the same (the said policies and the proceeds thereof however not to be treated as income bearing until the amounts payable in respect thereof shall have been received and invested) . . ." in the events which happened to the settlor's nephew, *J.B.*, for his life. The income of the trust fund was accordingly paid to *J.B.* from 30th June, 1942. The settlor died in 1951 and bonds and cash amounting to £19,753 2s. were received by the bank in satisfaction of the two policies; and the Crown claimed estate duty under s. 2 (1) (*d*) of the Finance Act, 1894, on the life interest of *J.B.* in that sum. The Crown contended that, under the terms of the settlement, the life interest of *J.B.* did not fall into possession until the settlor's death. Harman, J., held that the interest of the life tenant in the policies was, on the true construction of the settlement, a true life interest in possession and that, accordingly, estate duty was not exigible in respect of it on the death of the settlor. The Crown appealed.

LORD EVERSHED, M.R., said that by the terms of the settlement the rights of the tenant for life as regards the life policies were limited, except in so far as any proceeds of the policies were received during the lifetime of the settlor, to the right, if necessary by application to the court, to require the bank to preserve and maintain the policies according to their terms. The bank were given no power to surrender or otherwise realise the policies, still less to put a tenant for life in possession of them in the sense of transferring the legal title in them to him so as to enable him to deal therewith himself. When the settlor died the life tenant then had the right of requiring the bank to enforce the terms of the policies and collect and invest the proceeds, and thereafter (assuming that the accumulation period had expired) the further right to require the bank to pay to him the income of the resulting investments. The "quality" (using the expression of Viscount Simon in *In re D'Avigdor-Goldsmid* v. *Inland Revenue Commissioners* [1953] A.C. 347, 361) of the tenant for life's rights *quoad* the policies underwent a change of substance upon the settlor's death. Applying s. 2 (1) (*d*) of the Finance Act, 1894, the property (or "other interest") provided by the settlor was the policies and the whole of the contractual rights comprised in the policies; those rights included the right upon the happening of a future event to receive the policy moneys; and upon that event there arose or accrued to the tenant for life, if he survived, for the first time a beneficial interest, namely, the right to the present enjoyment thereafter of the income. Duty was, accordingly, payable under s. 2 (1) (*d*) in respect of that interest. In the *D'Avigdor-Goldsmid* case the decision was based upon and limited to the proposition that, in the circumstances of that case, unlike the present case, the appellant was at all material times both before and after the settlor's death absolute beneficial owner of the relevant policy together with all the rights and incidents attached thereto. The question at issue in the present case was expressly left open in that case.

BIRKETT, L.J., agreed.

ROMER, L.J., dissented. The right of the life tenant to compel the trustees to enforce their contractual rights under the policies and to perform the duties imposed by the settlement was the same before the death of the settlor as afterwards. That right, however, was not a beneficial interest in the policies which the settlor provided, but a right which the law attached to that beneficial interest, so that it was immaterial whether it had undergone a change. The vital question was whether the life tenant acquired a beneficial interest in the policies on the death which he had not possessed before. If his interest had been confined to an interest in the moneys received by the trustees under the policies when the settlor died his interest would have been merely contingent and expectant while the settlor was alive; but he was by the terms of the settlement entitled to the income of moneys which became payable under the policies while the life assured was still in being. He had in fact received certain sums, which he could only have been entitled to receive by virtue of his beneficial interest under the settlement, just as on the death of the settlor he would by virtue of his beneficial interest be entitled to receive the income of the policy moneys when received and invested. His lordship said that he could not see how the one beneficial interest differed in " quality " from the other, or how, in the words of Lord Reid in the *D'Avigdor-Goldsmid* case, it could truly be said that " some right of property of a different kind from that previously enjoyed by " *J.B.* accrued or arose on the death of the settlor. He would dismiss the appeal.

Appeal allowed. Leave to appeal.

APPEARANCES: *John Pennycuick*, Q.C., and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*); *Geoffrey Cross*, Q.C., and *J. A. Wolfe* (*Parker, Garrett & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 735

HIRE-PURCHASE: ACTION FOR RECOVERY: CLAIM AGAINST GUARANTOR: HIRER TO BE MADE PARTY

United Motor Finance Corporation, Ltd. *v.* Turner and Another

Lord Evershed, M.R., Singleton and Parker, L.JJ.

24th February, 1956

Appeal from New Mills and Buxton County Court.

The owners of a motor-bicycle, the subject of a hire-purchase agreement, terminated the hire in accordance with the terms of the agreement and began proceedings in the county court, naming as defendants the hirer and his father, who had signed a contract of guarantee. The summons was not served on the hirer. The particulars of claim included a claim for the recovery of the hired goods, but the owners did not proceed with that claim and sought to rely exclusively on the claim against the guarantor under the contract of guarantee. The county court judge non-suited the owners, because, having commenced " an action . . . to recover possession of goods from a hirer " within s. 12 (1) of the Hire-Purchase Act, 1938, they had not " made " the hirer a party to that action as required by s. 12 (2) of the Act. The owners appealed.

LORD EVERSHED, M.R., said that an action in the county court was " commenced " within the meaning of s. 12 (1) of the Act of 1938 once the steps had been taken which resulted in the emergence of a plaint. In the present case, therefore, there had been commenced an action for the recovery of the hired goods and, by virtue of s. 12 (2), all the parties to the hire-purchase agreement had to be " made " parties to that action, that is, they had to be made effectively parties to the action by service or substituted service so that the persons so named should be subject to the court's jurisdiction; merely naming them as parties to the action without more was insufficient. It might be that an owner could start proceedings against a guarantor alone by an action in which he did not claim any right of recovery of possession, though his lordship did not so decide, but in the present case as an action for recovery had been commenced the claim against the guarantor had to be a claim made in that action.

SINGLETON and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *D. J. Ackner* (*Duthie, Hart & Duthie*); *R. Graham Dow* (*Wilfrid Taylor & Hindle*, Manchester).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 730

Chancery Division

TRUST: SETTLED LAND ACT POWERS AND DUTIES OF TRUSTEES FOR SALE: EXPENDITURE OF CAPITAL MONEYS ON REPAIRS

***In re* Boston's Will Trusts; Inglis *v.* Boston**

Vaisey, J. 22nd February, 1956

Adjourned summons.

By s. 28 of the Law of Property Act, 1925, trustees for sale have in relation to land all the powers of a tenant for life and trustees under the Settled Land Act, 1925. In *In re Duke of Northumberland* [1951] Ch. 202 it was held that the provisions of the Settled Land Act, 1925, and the Agricultural Holdings Act, 1948, authorised the application of capital moneys by a tenant for life for the payment of repairs to farm property. A testator, who died on 16th September, 1941, by his will devised and bequeathed his residuary real and personal estate unto the executors and trustees thereof upon trust for sale and conversion (with the usual power to postpone sale and conversion) and for investment. Included in the residuary estate were certain valuable freehold properties, agricultural property and urban property, which had been retained by the trustees in exercise of the power to postpone sale conferred by the testator's will. In the period between the death of the testator and the spring of 1951 the trustees had expended a considerable sum of money on repairs to the properties in question. Subsequent to the decision in *In re Duke of Northumberland, supra*, the trustees took the advice of counsel on the question whether, in view of that decision, they could properly apply capital moneys of the estate for making payments for repairs which, but for the provisions of the Agricultural Holdings Act, 1948, could only have been chargeable against income. The trustees were advised, and subsequently acted on such advice, that they could apply capital moneys in accordance with *In re Duke of Northumberland*, and could themselves give the necessary directions for such application, subject only to their obtaining surveyor's certificates under s. 84 (2) (i) of the Settled Land Act, 1925. The trustees, who included a person contingently interested in remainder to the estate, now raised the questions, *inter alia*, how far they were entitled, as persons having the powers of a tenant for life under the Settled Land Act, 1925, to continue the course which they had hitherto adopted of paying for repairs out of capital, and whether they, as trustees for sale, having regard to the terms of s. 75 (2) of the said Act, had a discretion to apply capital moneys for the payment of repairs without regard to the interests of the persons entitled to the capital of the estate in remainder.

VAISEY, J., said that, though the *Northumberland* case did to some extent relieve a tenant for life of settled land from the obligation of protecting capital, it might be difficult to see how trustees for sale, who had an additional obligation to hold a fair balance between capital and income, could properly make use of that decision for the benefit of income. The *Northumberland* decision had been described as revolutionary, and had seriously encroached on the duty of a tenant for life of settled land to have regard to interests in remainder; it permitted but did not oblige the tenant to think of himself first and direct income repairs to be met out of capital. But when such powers and the powers of trustees for sale were vested in the same persons, there must be a definite limit to the freedom of the exercise of the tenant for life powers by those persons. It would be difficult to define the principles under which such discretion should be exercised, but it would not be wrong for trustees to take into consideration the comparative wealth or poverty of parties entitled to capital and income, or any benefits which they might have conferred on the settled property. There would be a declaration in general terms that the trustees, notwithstanding para. 23 of Sched. III to the Agricultural Holdings Act, 1948, had a duty to preserve the capital value of the residuary estate in exercising the discretionary powers conferred on them by the joint effect of s. 28 of the Law of Property Act, 1925, s. 73 (1) (iv) of the Settled Land Act, 1925, and s. 96 (1) of the Agricultural Holdings Act, 1948, and ought not to lay out capital moneys in any manner authorised by those sections without regard to such duty. Declaration accordingly.

APPEARANCES: *E. B. Stamp; E. I. Goulding; J. Mills* (*Boodle, Hatfield & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 700

Queen's Bench Division

ROAD TRAFFIC: DISQUALIFICATION REMOVED AS FROM FUTURE DATE: SUBSEQUENT APPLICATION FOR IMMEDIATE REMOVAL

R. *v.* Manchester Justices; *ex parte* Gaynor

Hallett, Pearce and Pearson, JJ. 28th November, 1955

Application for mandamus.

The Road Traffic Act, 1930, provides by s. 7 (3): "A person who by virtue of a conviction . . . is disqualified for holding or obtaining a licence, may . . . apply to the court before which he was convicted . . . to remove the disqualification. . . . Provided that, where an application under this subsection is refused, a further application thereunder shall not be entertained if made within three months after the date of the refusal." The applicant was convicted of dangerous driving on 27th April, 1955, and disqualified for three years. On an application made on 27th May, 1955, the justices ordered a removal of the disqualification as from 27th April, 1956. On a further application made on 31st August, 1955, for immediate removal of the disqualification on the ground of irretrievable hardship, the justices held that they had no jurisdiction to hear it since further applications could only be made if a previous application had been refused. At the hearing of the application for mandamus, it was contended that, as the applicant was still disqualified at the time of the second application, the justices had jurisdiction to grant it.

HALLETT, J., said that the court thought it clear that the justices had jurisdiction to entertain the second application. Application granted.

APPEARANCES: *F. P. Neill* (*Gregory, Rowcliffe & Co.*, for *Pattinson, Harrison & Milne*, Macclesfield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 280**

Probate, Divorce and Admiralty Division

DIVORCE: DESERTION: PETITIONER'S ADULTERY DURING PERIOD OF DESERTION

Parrock *v.* Parrock

Karminski, J. 21st November, 1955

Undefended petition for divorce.

A husband by his petition alleged that his wife, whom he had married in 1920, had deserted him in February, 1951, when she left the matrimonial home. He prayed for the exercise of the court's discretion in respect of his adultery since the summer of 1953 with a woman with whom he had been living and whom he wished to marry. He had been on very friendly terms with that woman in 1945 and 1946, and his wife had objected to the association, which was broken off. The friendship was renewed at the end of 1952 when the woman became his housekeeper. When the wife left the husband she went to share a caravan with another man; but a petition presented by the husband in April, 1952, on the ground of adultery was dismissed in April, 1953, in a defended suit. Shortly afterwards, but before the husband began to commit adultery, she unsuccessfully applied for an order of the justices on the ground of neglect to maintain. In both those proceedings she made it clear that she suspected an adulterous relationship between the husband and his housekeeper; and it was established that she was aware of the adultery after it in fact began. She continued to share the caravan with the man previously named as co-respondent. The court invoked the assistance in argument of the Queen's Proctor.

KARMINSKI, J., said that the burden in such cases must always be on the petitioner who had been committing adultery to satisfy the court of the matters required in *Herod* v. *Herod* [1939] P. 11, that the respondent either did not know that adultery had been committed, or that, if that knowledge was present to the respondent's mind, he was quite uninfluenced by it in his decision to remain apart and not return to the petitioner spouse. His lordship referred to *Williams* v. *Williams* [1943] 2 All E.R. 746, and said that the difference between the present case and the facts in *Williams* v. *Williams* was that in *Williams* v. *Williams* the wife respondent could not in any way be attacked because of her matrimonial conduct apart from the alleged desertion. It had not been suggested, as here, that she had gone to live against the wishes of her husband in a caravan with another man under circumstances which might not unreasonably arouse the suspicion that adultery had been committed in that caravan. In the present case, the wife had so withdrawn herself from cohabitation to start life in a caravan, although the court had found that she had not committed adultery there. Although the wife clearly found out that the husband was committing adultery after the summer of 1953, she had become quite indifferent to what went on in the husband's home, or what the husband did with other women, once she had gone to set up house with the other man. Although the matter had not been easy, the desertion was proved, and in the circumstances the discretion of the court should be exercised in the petitioner's favour. Decree *nisi*.

APPEARANCES: *T. J. Kelly* (*Matthew Arnold & Baldwin*); *Colin Duncan* (*Queen's Proctor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 270**

HUSBAND AND WIFE: JUSTICES: PRACTICE: REASONABLE BELIEF IN ADULTERY

Sullivan *v.* Sullivan

Lord Merriman, P., and Collingwood, J. 13th February, 1956

Appeal from an order of the justices for the City and County of Bristol.

The wife left the matrimonial home on 23rd September, 1955, and issued a summons on the ground of the husband's desertion, asserting that she left in the reasonable belief, induced by the husband's conduct, that he had committed adultery. In that connection she relied on certain events which occurred between 15th September, 1955, and the discovery on 18th September, 1955, of certain stains on the husband's clothing by the wife. There was no formal complaint of adultery. The complaint was one of desertion on 23rd September, 1955. Her solicitors wrote to the husband's solicitors asking them to accept their letter as notice that they intended, on behalf of the wife, to allege that the husband had committed adultery "with a woman unknown shortly before the discovery of the stains and blood on Mr. Sullivan's outer and under-clothing on the morning of Sunday, the 18th September." The justices found the charge of adultery was not proved, but made an order in favour of the wife on the ground of desertion. The husband appealed.

LORD MERRIMAN, P., said that short of an actual formal complaint it would be difficult to imagine a plainer charge of adultery on a specified, or at least an ascertainable, date. The justices had said that they had not been satisfied that adultery had been proved, while, at the same time, they had found that the wife had had reasonable grounds at the time for so believing, and that such belief had been induced by the husband's conduct. Counsel for the wife had stated in argument that the notice had been given because it was the universal practice to give notice of a charge of adultery whenever adultery was mentioned in any form whatever. He (his lordship) in no way retracted from *Duffield* v. *Duffield* [1949] W.N. 159, where he had said: "It is of the utmost importance that, whenever a charge of adultery is going to be made, in whatever context, under the summary jurisdiction procedure, full and proper particulars should be given," but the important words were "whenever a charge of adultery is made." There was an essential difference between making a charge of adultery and alleging that the conduct of one spouse or the other had induced a reasonable belief that adultery had been committed. A specific allegation of adultery should not be made merely as a matter of course unless it was intended to make the actual charge of adultery. In the present case it would have been appropriate and sufficient to give notice that the wife intended to rely, in support of the charge of desertion, on a reasonable belief that adultery had been committed at the time and in the circumstances specified; in other words, to state the substance of her case. That was the true effect of *Frampton* v. *Frampton* [1951] W.N. 250 and *Jones* v. *Jones* [1954] 1 W.L.R. 1474. What was required was a correct statement of what was the substance of the wife's case; but adultery should not be charged merely as a matter of course. His lordship then referred to *Allen* v. *Allen* [1951] W.N. 322; *West* v. *West* [1954] P. 444; and *Everitt* v. *Everitt* (No. 2) [1949] P. 374, and held that, when the two issues of adultery and reasonable belief by one party in that adultery, induced by the conduct of the other spouse, came to be determined by the same court at the same hearing, the negativing of the charge of adultery did not operate retrospectively to negative the existence of the reasonable belief

in that adultery. He also held that it was impossible to say that the acts put forward in support of the reasonable belief remained the same throughout up to the moment of the justices' decision, since the justices had had the benefit of evidence upon the matter which was not available to the wife when she formed her belief in the husband's adultery. It was, therefore, plainly open to the justices, while finding that the adultery was not proved, to hold that, at the time when the wife left the matrimonial home, she believed that the husband had committed adultery and had reasonable grounds, induced by his conduct, for so doing. They were, therefore, entitled to hold that she had been expelled by the husband and that he was guilty of desertion.

COLLINGWOOD, J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *R. A. Macdonald* (*Vallance & Vallance*, for *Parry, Mackan & Hamilton*, Bristol); *W. M. Huntley* (*Pengelly & Co.*, for *J. W. Ward & Son*, Bristol).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 277*n***

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Rabbits Bill [H.L.] [7th March.

To make provision for preventing the spread of rabbits.

Read Second Time :—

Housing Subsidies Bill [H.C.] [6th March.

Read Third Time :—

Elder Yard Chapel Chesterfield Bill [H.L.] [7th March.
Sion College Bill [H.L.] [7th March.

In Committee :—

Solicitors (Amendment) Bill [H.L.] [6th March.

(For report, see *ante*, p. 204.)

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Pakistan (Consequential Provisions) Bill [H.C.] [7th March.

To make provision as to the operation of the law in relation to Pakistan and persons and things in any way belonging to or connected with Pakistan, in view of Pakistan's becoming a Republic while remaining a member of the Commonwealth.

Read Second Time :—

Restrictive Trade Practices Bill [H.C.] [6th March.

B. QUESTIONS

LODGINGS (REPAIRS)

Asked whether he was aware that landlords could take the opportunity of a notice under s. 11 of the Housing Repairs and Rents Act, 1954, to evict a tenant instead of doing reasonable and necessary repairs, Mr. DUNCAN SANDYS said that he was, but he had heard of only one case in which the tenant was evicted. He would watch the position and, if it proved necessary, consider what action he should take. [6th March.

REPRIEVED MURDERERS (SENTENCES SERVED)

Major LLOYD GEORGE said that the average period of imprisonment served by persons who, during the last fifty years, had been released after being reprieved from sentence of hanging was nine years. [8th March.

HIRE-PURCHASE RESTRICTIONS (CREDIT-SALE AGREEMENTS)

Mr. PETER THORNEYCROFT said that a credit-sale agreement for less than nine months was outside the scope of the regulations requiring deposits on hire-purchase of goods. [8th March.

STATUTORY INSTRUMENTS

East Devon Water (Upottery) Order, 1956. (S.I. 1956 No. 296.) 8d.

Kingston upon Hull Corporation (Keldgate Borehole) Water Order, 1956. (S.I. 1956 No. 297.) 6d.

Kingston-upon-Thames (Amendment of Local Enactments) Order, 1956. (S.I. 1956 No. 289.)

Malvern Water Order, 1956. (S.I. 1956 No. 280.)

National Health Service (Travelling Allowances, etc.) Regulations, 1956. (S.I. 1956 No. 265.) 6d.

Petty Sessional Divisions (Lincoln, Parts of Holland) Order, 1956. (S.I. 1956 No. 298.) 5d.

Retail Food Trades Wages Council (England and Wales) Wages Regulation Order, 1956. (S.I. 1956 No. 263.) 11d.

Retention of Main and Pipes under a Highway (Exeter) (No. 1) Order, 1956. (S.I. 1956 No. 267.)

Rochdale (Repeal and Amendment of Local Enactments) Order, 1956. (S.I. 1956 No. 290.)

Stopping up of Highways (Buckinghamshire) (No. 2) Order, 1956. (S.I. 1956 No. 254.)

Stopping up of Highways (Buckinghamshire) (No. 3) Order, 1956. (S.I. 1956 No. 266.)

Stopping up of Highways (County of Southampton) (No. 2) Order, 1956. (S.I. 1956 No. 285.)

Stopping up of Highways (Coventry) (No. 1) Order, 1956. (S.I. 1956 No. 281.)

Stopping up of Highways (Denbighshire) (No. 4) Order, 1956. (S.I. 1956 No. 282.)

Stopping up of Highways (Flintshire) (No. 1) Order, 1956. (S.I. 1956 No. 252.)

Stopping up of Highways (Gloucestershire) (No. 2) Order, 1956. (S.I. 1956 No. 268.)

Stopping up of Highways (Gloucestershire) (No. 4) Order, 1956. (S.I. 1956 No. 269.)

Stopping up of Highways (Gloucestershire) (No. 8) Order, 1956. (S.I. 1956 No. 270.)

Stopping up of Highways (Kent) (No. 7) Order, 1956. (S.I. 1956 No. 283.)

Stopping up of Highways (Lancashire) (No. 3) Order, 1956. (S.I. 1956 No. 271.)

Stopping up of Highways (Lincolnshire—Parts of Lindsey) (No. 1) Order, 1956. (S.I. 1956 No. 284.)

Stopping up of Highways (Middlesex) (No. 1) Order, 1956. (S.I. 1956 No. 253.)

Stopping up of Highways (Portsmouth) (No. 1) Order, 1956. (S.I. 1956 No. 255.)

Stopping up of Highways (Surrey) (No. 2) Order, 1956. (S.I. 1956 No. 272.)

Teachers Superannuation (Approved External Service) Amending Rules, 1956. (S.I. 1956 No. 262.)

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NOTES AND NEWS

Honours and Appointments

The Crown Office have announced that the name of the Deputy Chairman of the Cumberland Quarter Sessions whose appointment was recently approved by the Queen is Mr. JOSEPH MARIE DAVIES and not as stated in their previous notice, given at p. 191, *ante*.

Personal Notes

Mr. Peter William Skinnard, solicitor, of Callington, was married on 22nd February to Miss June Doney, of Liskeard.

Miscellaneous

CITY OF BATH DEVELOPMENT PLAN

Proposals for alterations or additions to the above-mentioned development plan were on 2nd March, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the City and County Borough of Bath. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Clerk's Office (Legal Section), Guildhall, Bath. The copies or extracts of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the place mentioned above between the hours of 9.30 a.m. and 12.30 p.m. and from 2.30 p.m. to 5 p.m. on every week-day other than Saturdays, when the hours are 9.30 a.m. to 12 noon. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 21st April, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Bath City Council, Town Clerk's Office (Legal Section), Guildhall, Bath, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

Wills and Bequests

Mr. William George Rhymes Saunders, solicitor, of Purley, Surrey, left £24,563.

OBITUARY

MR. W. O. ATKIN

Mr. William Oliver Atkin, retired solicitor, of Paddington, London, W.2, and Ealing, London, W.5, died on 5th March, aged 80. He was admitted in 1923.

MR. F. W. BACKHOUSE

Mr. Frederick William Backhouse, solicitor, of Marple, Cheshire, has died, aged 53. He was admitted in 1949.

MR. A. J. CLARKSON

Mr. Albert John Clarkson, solicitor, of Liverpool and Blackburn, died on 5th March, aged 65. He was admitted in 1927.

MR. A. M. FAIRBAIRN

Mr. Andrew Martin Fairbairn, retired solicitor, of Bexhill-on-Sea, died on 5th March.

CASES REPORTED IN VOL. 100

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